STATE OF MICHIGAN

COURT OF APPEALS

CAROLYN SUE LOVELACE, Plaintiff-Appellant,	UNPUBLISHED November 16, 2006
v	No. 269776 Oscoda Circuit Court
GARLAND GOLF COURSE, Defendant-Appellee.	LC No. 04-003853-NO

Before: Whitbeck, C.J., and Saad and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court order granting summary disposition to defendant on plaintiff's claim alleging personal injury. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

Plaintiff volunteered to be part of the welcoming committee at a fundraiser sponsored by her employer at defendant golf course. As part of their volunteer duties, plaintiff and another employee, Dianna Schafer, toured the course in a golf cart on a paved path greeting and dispensing refreshments to the participants. As plaintiff and Schafer rode to the eighteenth hole, with Schafer driving, the path branched. One branch was paved and turned sharply to their right; this path led to the former location of the eighteenth hole. The other branch was gravel and proceeded straight; this path led to the new location of the eighteenth hole. Across the paved path was a quarter-inch, white and green nylon rope suspended at 12 to 18 inches above the path and attached to two landscape timbers placed upright in the ground. Not knowing the location of the eighteenth hole, Schafer decided to take the paved path.

As Schafer turned right onto the path, she looked to her left to check for traffic. As the cart struck the nylon rope, the rope rode up the tires and the front of the cart, broke the struts that supported the roof, and struck plaintiff in her arms and face. The cart's roof then collapsed and fell on plaintiff's head. Schafer claims that she did not see the rope because it was too low. Plaintiff said that she saw the rope just before they turned onto path but did not have enough time to alert Schafer to avoid it.

Plaintiff sued defendant golf course, alleging negligence based on premises liability. Defendant moved for summary disposition under MCR 2.116(C)(10), arguing that the rope across the path was open and obvious. Plaintiff responded that the open and obvious doctrine did not apply. The circuit court granted defendant's motion, stating from the bench, "I do find that a rope hanging across a cart path on a golf course is an open and obvious danger that the plaintiff should have seen, that any objective person would have seen."

On appeal plaintiff argues that the circuit court erred in granting summary disposition to defendant because genuine issues of material fact existed regarding (1) whether an average person of ordinary intelligence would be able to discover upon casual inspection the risk of harm that the rope presented as it extended across the path, (2) whether the rope itself was open and obvious, and (3) whether there were special aspects that made the rope unreasonably dangerous. We disagree.

II. STANDARD OF REVIEW

This Court reviews de novo the grant or denial of summary disposition. *Spiek v Department of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

III. ANALYSIS

Generally, the possessor of premises must exercise reasonable care to protect invitees from an unreasonable risk of harm caused by a dangerous condition on the land. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). However, if the dangerous condition is open and obvious so that the invitee is reasonably expected to discover it, the invitor owes no duty to protect or warn the invitee. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 475; 499 NW2d 379 (1993). A dangerous condition is open and obvious where "an average user with ordinary intelligence [would] have been able to discover the danger and the risk presented upon casual inspection." *Id.* at 475. The open-and-obvious analysis focuses on the objective nature of the condition, not on the subjective care or perception of the plaintiff. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 524; 629 NW2d 384 (2001). Thus, if a condition is dangerous only because a particular invitee does not discover the condition or realize its danger, the open and obvious doctrine precludes liability for the possessor of the premises. *Bertrand, supra* at 611; *Novotney, supra* at 474-475.

Nevertheless, if "special aspects" of a dangerous condition make an open and obvious risk "unreasonably dangerous," then "the premises possessor has a duty to undertake reasonable precautions to protect invitees from that risk." *Lugo, supra* at 517. "'Special aspects" exist if the dangerous condition 'is effectively unavoidable' or constitutes 'an unreasonably high risk of severe harm.'" *Robertson v Blue Water Oil Co*, 268 Mich App 588, 593; 708 NW2d 749 (2005), quoting *Lugo, supra* at 518.

In this case, there is no factual dispute that the quarter-inch, white and green rope was suspended across the path to the former location of the eighteenth hole. The rope was not hidden from view by any obstruction. Plaintiff admits that she saw the rope. Schafer even admitted that she was checking to her left for traffic as she turned right onto the path. Based on the record, we find that the rope was open and obvious because it was readily discoverable to an average person of ordinary intelligence upon casual observation.

Plaintiff further argues that, even if the rope was open and obvious, the circuit court did not consider or determine whether the risk of danger posed by the rope was also open and obvious. This claim lacks merit because, as noted above, the circuit court specifically found that "a rope hanging across a cart path on a golf course is an open and obvious danger." The circuit court did not state this as a general proposition but specifically addressed the issue as presented "at the golf course in question."

Finally, plaintiff has not identified any "special aspects" attendant to the rope that made it unavoidable or constituted an unreasonably high risk of severe harm. Schafer could have simply driven around the rope. Although the fact that the nylon rope was strong and stretchable, and, thereby, presented some danger to the occupants of a golf cart driving into it, we conclude that the rope did not present an unreasonably high risk of severe injury.

Affirmed.

/s/ William C. Whitbeck
/s/ Henry William Saad
/s/ Bill Schuette